

(b) [Reserved]

[65 FR 8636, Feb. 22, 2000, as amended at 67 FR 8465, Feb. 25, 2002; 70 FR 33268, June 7, 2005]

### Subpart—West Indian Fruit Fly

SOURCE: 66 FR 6433, Jan. 22, 2001, unless otherwise noted.

#### § 301.98 Restrictions on interstate movement of regulated articles.

No person may move interstate from any quarantined area any regulated article except in accordance with this subpart.<sup>1</sup>

#### § 301.98-1 Definitions.

*Administrator.* The Administrator, Animal and Plant Health Inspection Service, or any person authorized to act for the Administrator.

*Animal and Plant Health Inspection Service.* The Animal and Plant Health Inspection Service (APHIS) of the United States Department of Agriculture.

*Certificate.* A document in which an inspector or person operating under a compliance agreement affirms that a specified regulated article is free of West Indian fruit fly and may be moved interstate to any destination.

*Compliance agreement.* A written agreement between APHIS and a person engaged in growing, handling, or moving regulated articles, wherein the person agrees to comply with this subpart.

*Core area.* The 1-square-mile area surrounding each property where West Indian fruit fly has been detected.

*Day degrees.* A mathematical construct combining average temperature over time that is used to calculate the length of a West Indian fruit fly life cycle. Day degrees are the product of the following formula, with all temperatures measured in °F: (Minimum

Daily Temp+ Maximum Daily Temp)/2) – 59°=Day Degrees.

*Departmental permit.* A document issued by the Administrator in which he or she affirms that interstate movement of the regulated article identified on the document is for scientific or experimental purposes and that the regulated article is eligible for interstate movement in accordance with § 301.98-4(c) of this subpart.

*Dripline.* The line around the canopy of a plant.

*Infestation.* The presence of the West Indian fruit fly or the existence of circumstances that makes it reasonable to believe that the West Indian fruit fly is present.

*Inspector.* Any employee of the APHIS, U.S. Department of Agriculture, or other person authorized by the Administrator to perform the duties required under this subpart.

*Interstate.* From any State into or through any other State.

*Limited permit.* A document in which an inspector or person operating under a compliance agreement affirms that the regulated article identified on the document is eligible for interstate movement in accordance with § 301.98-5(b) of this subpart only to a specified destination and only in accordance with specified conditions.

*Moved (move, movement).* Shipped, offered for shipment, received for transportation, transported, carried, or allowed to be moved, shipped, transported, or carried.

*Person.* Any association, company, corporation, firm, individual, joint stock company, partnership, society, or other entity.

*Plant Protection and Quarantine.* Plant Protection and Quarantine, Animal and Plant Health Inspection Service, United States Department of Agriculture.

*Quarantined area.* Any State, or any portion of a State, listed in § 301.98-3(c) of this subpart or otherwise designated as a quarantined area in accordance with § 301.98-3(b) of this subpart.

*Regulated article.* Any article listed in § 301.98-2 or otherwise designated as a regulated article in accordance with § 301.98-2(d).

*State.* The District of Columbia, Puerto Rico, the Northern Mariana Islands,

<sup>1</sup>Any properly identified inspector is authorized to stop and inspect persons and means of conveyance and to seize, quarantine, treat, apply other remedial measures to, destroy, or otherwise dispose of regulated articles as provided in section 414 of the Plant Protection Act (Title IV, Pub. L. 106-224, 114 Stat. 444, 7 U.S.C. 7714).

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or any State, territory, or possession of the United States.

*West Indian fruit fly.* The insect known as the West Indian fruit fly, *Anastrepha obliqua* (Macquart), in any stage of development.

[66 FR 6433, Jan. 22, 2001; 66 FR 20186, Apr. 20, 2001]

§ 301.98-2 Regulated articles.

The following are regulated articles:

(a) West Indian fruit flies.<sup>2</sup>

(b)(1) The following fruits and vegetables:

Barbados cherry (*Malpighia glabra*)

Carambola (*Averrhoa carambola*)

Granadilla, giant (*Passiflora quadrangularis*)

Guava (*Psidium guajava*)

Guava, strawberry (*Psidium littorale*)

Hog-plum (*Spondias mombin*)

Japanese plum (*Prunus salicina*)

Jew plum (*Spondias cytherea*)

Ketembilla (*Dovyalis hebecarpa*)

Loquat (*Eriobotrya japonica*)

Malay-apple (*Syzygium malaccense*)

Mango (*Mangifera indica*)

Passion fruit (*Passiflora edulis*)

Peach (*Prunus persica*)

Pear (*Pyrus communis*)

Ramón (*Brosimum alicastrum*)

Red mombin (*Spondias purpurea*)

Rose-apple (*Syzygium jambos*)

Sapodilla (*Manilkara zapota*)

Sapote (*Diospyros* spp.)

(2) Any fruits or vegetables that are canned or dried or frozen below -17.8 °C. (0 °F.) are not regulated articles.

(c) Soil within the dripline of plants that are producing or have produced the fruits or vegetables listed in paragraph (b) of this section.

(d) Any other product, article, or means of conveyance not listed in paragraphs (a) through (c) of this section that an inspector determines presents a risk of spreading the West Indian fruit fly, when the inspector notifies the person in possession of the product, article, or means of conveyance that it is subject to the restrictions of this subpart.

[66 FR 6433, Jan. 22, 2001, as amended at 70 FR 21326, Apr. 26, 2005]

<sup>2</sup>Permit and other requirements for the interstate movement of West Indian fruit flies are contained in part 330 of this chapter.

§ 301.98-3 Quarantined areas.

(a) Except as otherwise provided in paragraph (b) of this section, the Administrator will list as a quarantined area in paragraph (c) of this section each State, or each portion of a State, in which the West Indian fruit fly has been found by an inspector, in which the Administrator has reason to believe that the West Indian fruit fly is present, or that the Administrator considers necessary to quarantine because of its inseparability for quarantine enforcement purposes from localities in which the West Indian fruit fly has been found. Less than an entire State will be designated as a quarantined area only if the Administrator determines that:

(1) The State has adopted and is enforcing restrictions on the intrastate movement of the regulated articles that are substantially the same as those imposed by this subpart on the interstate movement of regulated articles; and

(2) The designation of less than the entire State as a quarantined area will prevent the interstate spread of the West Indian fruit fly.

(b) The Administrator or an inspector may temporarily designate any nonquarantined area in a State as a quarantined area in accordance with paragraph (a) of this section. The Administrator will give a copy of this regulation along with a written notice for the temporary designation to the owner or person in possession of the nonquarantined area. Thereafter, the interstate movement of any regulated article from an area temporarily designated as a quarantined area will be subject to this subpart. As soon as practicable, this area will be added to the list in paragraph (c) of this section or the designation will be terminated by the Administrator or an inspector. The owner or person in possession of an area for which designation is terminated will be given notice of the termination as soon as practicable.

(c) The areas described below are designated as quarantined areas: There are no areas in the continental United